Public Prosecutor v Hoo Chee Keong

HIGH COURT (MELAKA) — CRIMINAL APPEAL NO 42-6-1996
AUGUSTINE PAUL JC
18 SEPTEMBER 1996

Criminal Law *— Penal Code (Malaysia) — ss 467, 474 — Forgery — When forgery complete*

Criminal Law *— Penal Code (Malaysia) — ss 467, 474 — Forgery — Fraudulently using a forged document — Forged credit cards — Whether accused had knowledge that credit cards were forged*

Words and Phrases *— 'Valuable security' — Penal Code (FMS Cap 45) s 30*

The prosecution in this case appealed against the decision of the learned sessions court judge in acquitting and discharging the accused on three charges under s 474 of the Penal Code (FMS Cap 45) for having possession of three credit cards knowing them to be forged, with intent to use them as genuine, without calling upon him to enter his defence. The accused was arrested and found on him were three credit cards which bore the names of three different persons (exhs P3, P4 and P5), four sales slip (exhs P6A–D), and a slip of paper which had eight series of numbers and four signatures on it (exh P8). SP8, the Director of Master Card International, Asia Pacific Region for Security and Risk Management, testified that there were complaints of improper use of the three cards. The use of P3 was blocked on 30 December 1993. With regard to P4, the complaint was received on 28 June 1994. SP8 also testified that a card can be accepted at an outlet either by electronically checking the encoded numbers against the embossed numbers on the card or by the manual method. In the case of the manual method where the transaction was below the floor limit, a person who produced the card could still use it even if it had been blocked. Two issues were identified, namely: (i) whether the accused had knowledge that the documents were forged and whether he intended to use them fraudulently or dishonestly as genuine; and (ii) whether the documents were valuable securities within the meaning of s 474 read with s 30 of the Penal Code.

Held, allowing the appeal on the first and second charges and dismissing the appeal on the third charge:

(1) Proof of knowledge was very often a matter for inference. Possession of several forged documents, as in the circumstances of the appeal, readily led to an inference against the accused of the required knowledge and intention (see p 459E).

(2) The prosecution had successfully established that the accused was in possession of three forged credit cards in three different names. The circumstances led to the inference that the accused had knowledge that they were forged and had intended to use them as genuine. If the accused did not have any knowledge that

they were forged or that he had intended to use them as genuine then it was a matter especially within his knowledge and it was for him to prove such fact under s 106 of the Evidence Act 1950 (see p 460H–I). A

(3) A valuable security was a document of value. It was a document which itself created or extinguished legal rights or purported to create or extinguish them. A document, although not a valuable security, would still be considered as one if it purported to be a valuable security (see p 461C); *Kashi Nath Naek v Queen Empress* ILR 25 Cal 207 followed. B

(4) A forgery was complete as soon as the forged document purported to be a valuable security. It followed therefore that it was not necessary that the document should be prima facie good. What was important was that the document must be available for the purpose for which it was made. So long as a document purported to give authority to some person to deliver movable property it was valuable security (see p 461F–I); *PP v Yap Chai Kee* (1923) 4 FMSLR 75 followed. C D

(5) In the case of exhs P3 and P4, they were still valid at the time of the recovery although they had been blocked. This meant that a person would not be able to use them if the electronic method was resorted to but would be able to do so if the manual method was followed. Under the latter category, the credit card was clearly a valuable security while under the former it purported to create a right on the face of it thereby qualifying it as a valuable security. Exhibits P3 and P4 were therefore valuable securities. In the case of P5, it was not a valuable security nor could it purport to be one as it had expired at the time of its recovery and could therefore not be used (see p 463B–E); *Tio Tek Huat v PP* [1993] 2 CLJ 570 distinguished. E F

[Bahasa Malaysia summary

Pihak pendakwa dalam kes ini telah merayu terhadap keputusan hakim yang arif mahkamah sesyen dalam membebaskan dan melepaskan tertuduh atas tiga pertuduhan di bawah s 474 Kanun Keseksaan (NMB Bab 45) kerana memiliki tiga kad kredit dengan pengetahuan bahawa ianya dipalsukan, dengan tujuan menggunakannya sebagai tulin, tanpa memanggilnya untuk mengemukakan pembelaannya. Tertuduh telah ditangkap dan tiga kad kredit telah dijumpai padanya yang telah memperlihatkan nama tiga orang berlainan (eks P3, P4 dan P5), empat slip jualan (eks P6A–D) dan sehelai kertas yang mengandungi lapan siri nombor dan empat tandatangan di atasnya (eks P8). SP8, iaitu Pengarah MasterCard International, Kawasan Asia-Pasifik untuk Pengurusan Keselamatan dan Risiko telah memberi keterangan bahawa terdapat aduan mengenai penyalahgunaan tiga kad tersebut. Penggunaan eks P3 telah disekat pada 30 Disember 1993. Berkaitan dengan eks P4, G H I

aduan telah diterima pada 28 Jun 1994. SP8 juga telah memberi keterangan bahawa suatu kad boleh diterima di suatu tempat jualan dengan menyemak secara elektronik nombor yang dikodkan terhadap nombor-nombor yang dicetaktimbulkan atas kad tersebut ataupun secara manual. Melalui cara manual, di mana transaksi adalah di bawah had lantai, seseorang yang mengemukakan kadnya masih boleh menggunakannya walaupun penggunaannya telah dihalang. Dua isu untuk dipertimbangkan adalah: (i) sama ada tertuduh mempunyai pengetahuan bahawa dokumen itu telah dipalsukan dan sama ada dia berniat menggunakannya secara fraud ataupun dengan niat yang tidak jujur sebagai tulen; dan (ii) sama ada dokumen tersebut merupakan suratan cagaran bernilai mengikut makna s 474 dibaca bersama dengan s 30 Kanun Keseksaan.

Diputuskan, membenarkan rayuan atas pertuduhan-pertuduhan pertama dan kedua, dan menolak rayuan atas pertuduhan ketiga:

(1) Bukti pengetahuan biasanya merupakan suatu perkara untuk inferens. Milikan beberapa dokumen yang dipalsukan, seperti dalam keadaan rayuan ini, dengan sedianya telah menimbulkan inferens terhadap tertuduh tentang pengetahuan dan niat yang diperlukan (lihat ms 459E).

(2) Pihak pendakwa telah berjaya membuktikan bahawa tertuduh mempunyai dalam milikannya tiga kad kredit yang dipalsukan dalam tiga nama berlainan. Keadaan telah menimbulkan inferens bahawa tertuduh tahu bahawa kad-kad itu dipalsukan dan berniat menggunakannya sebagai tulen. Jikalau tertuduh tidak tahu bahawa dokumen tersebut telah dipalsukan ataupun bahawa dia berniat menggunakannya sebagai dokumen tulen, maka itu adalah suatu perkara yang khasnya berada dalam pengetahuan tertuduh dan tertuduh wajib membuktikan fakta tersebut di bawah s 106 Akta Keterangan 1950 (lihat ms 460H–I).

(3) Surat cagaran bernilai adalah dokumen bernilai. Ianya adalah suatu dokumen yang dengan sendirinya mewujudkan ataupun melupuskan hak sah ataupun kononnya mewujudkan ataupun melupuskannya. Walaupun sesuatu dokumen itu bukan merupakan surat cagaran bernilai, ianya masih dianggap sebagai demikian jika ia kononnya merupakan satu surat cagaran bernilai (lihat ms 461C) *Kashi Nath Naek v Queen Empress* ILR 25 Cal 207 diikut.

(4) Sesuatu pemalsuan itu adalah lengkap sebaik sahaja dokumen yang dipalsukan kononnya menjadi satu surat cagaran bernilai. Ini bermakna bahawa adalah tidak perlu bahawa dokumen tersebut harus prima facie elok. Apa yang penting adalah dokumen tersebut haruslah sedia ada untuk tujuan ianya dibuat. Asalkan dokumen tersebut bertujuan memberi kuasa kepada seseorang untuk menyerah harta alih, ianya adalah satu surat cagaran bernilai

(lihat ms 461F–I) *PP v Yap Chai Kee* (1923) 4 FMSLR 75 diikut. A

(5) Dalam kes eks P3 dan P4, mereka masih sah pada masa mereka ditemui walaupun penggunaan mereka telah disekat. Ini bermakna bahawa seseorang tidak boleh menggunakan kad-kad itu jika cara elektronik digunakan tetapi boleh berbuat demikian jika cara manual digunakan. Mengikut kategori kedua, dengan jelasnya kad kredit merupakan surat cagaran bernilai dan dalam kategori pertama, atas mukanya ia kononnya mewujudkan hak, maka ianya layak menjadi surat cagaran bernilai. Dengan itu eks P3 dan eks P4 adalah surat cagaran bernilai. Berkaitan dengan eks P5, ianya bukanlah dan tidak boleh dikatakan kononnya menjadi surat cagaran bernilai kerana ianya telah luput pada masa ditemui dan oleh yang demikian, ianya tidak dapat digunakan (lihat ms 463B–E); *Tio Tek Huat v PP* [1993] 2 CLJ 570 dibeza.] B C

Notes D

For cases on forgery, see 4 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 1305–1306.

Cases referred to

AB Ltd, Re [1957] MLJ 143 (refd) E
Daniel v The State AIR 1968 Mad 349 (refd)
Ho Tong Cheong & Ors v Oversea-Chinese Banking Corp Ltd [1967] 2 MLJ 70 (refd)
Kashi Nath Naek v Queen Empress ILR 25 Cal 207 (folld)
Lee Chin Hock v PP [1972] 2 MLJ 30 (refd)
Mersey Docks & Harbour Board v Procter [1923] AC 253 (refd) F
Mohd Shariff v PP [1964] MLJ 64 (refd)
Paramasivan & Ors v PP [1948–49] MLJ Supp 152 (refd)
Pashkodi v Krishnaji AIR 1947 Nag 145 (refd)
Periasamy v PP [1966] 1 MLJ 138 (refd)
Peter Tham Wing Fai v PP [1988] 2 MLJ 424 (refd) G
PP v Abang Abdul Rahman [1982] 1 MLJ 346 (refd)
PP v Lim Kwai Thean [1959] MLJ 179
PP v Ma'arif [1969] 2 MLJ 65 (refd)
PP v Yap Chai Kee (1923) 4 FMSLR 75 (folld)
Tio Tek Huat v PP [1993] 2 CLJ 570 (distd)
Yusoff bin Kassim v PP [1992] 2 MLJ 183 (refd) H

Legislation referred to

Evidence Act 1950 ss 101, 106
Penal Code (FMS Cap 45) ss 30, 467, 474

I

Anselm Charles Fernandis (Deputy Public Prosecutor) for the appellant.
FH D'Cruz (*KK Low* with him) (*Low & Lee*) for the respondent.

Augustine Paul JC: The three charges preferred against the accused in the Sessions Court at Melaka are as follows:

First Charge:

> Bahawa kamu pada 4 November 1994, lebih kurang jam 12.40 malam, di Seng Huat & Co, No 209, Jalan Laksamana Cheng Ho, di dalam daerah Melaka Tengah, di Negeri Melaka, didapati memiliki suratan cagaran berharga yang palsu iaitu sekeping kad kredit Citibank Preferred Mastercard No 5279–7815–2023–5001 atas nama PT Poon iaitu satu suratan dari jenis yang tersebut di dalam s 467 Kanun Keseksaan (NMB Bab 45), dengan pengetahuan yang suratan itu adalah palsu dan dengan maksud supaya suratan itu digunakan dengan curangnya sebagai tulen dan dengan itu kamu telah melakukan satu kesalahan yang boleh dihukum di bawah s 474 Kanun Keseksaan.

Second Charge:

> Bahawa kamu pada 4 November 1994, lebih kurang jam 12.40 malam, di Seng Huat & Co, No 209 Jalan Laksamana Cheng Ho, di dalam daerah Melaka Tengah, di Negeri Melaka, didapati memiliki suratan cagaran berharga yang palsu iaitu sekeping kad kredit National Westminster Bank Access Mastercard No 5400–6800–3003–0831 atas nama Tan Soon Meng iaitu satu suratan dari jenis yang tersebut dalam s 467 Kanun Keseksaan, dengan pengetahuan yang suratan itu adalah palsu dan dengan maksud supaya suratan itu digunakan sebagai tulen dan dengan itu kamu telah melakukan satu kesalahan yang boleh dihukum di bawah s 474 Kanun Keseksaan.

Third Charge:

> Bahawa kamu pada 4 November 1994, lebih kurang jam 12.40 malam, di Seng Huat & Co, No 209, Jalan Laksamana Cheng Ho, di dalam daerah Melaka Tengah, di Negeri Melaka, didapati memiliki suratan cagaran berharga yang palsu iaitu sekeping kad kredit Citibank Classic Mastercard No 5420–3272–0200–3180 atas nama Wong Kah Meng iaitu satu suratan dari jenis yang tersebut dalam s 467 Kanun Keseksaan, dengan pengetahuan yang suratan itu adalah palsu dan dengan maksud supaya suratan itu digunakan dengan curangnya sebagai tulen dan dengan itu kamu telah melakukan kesalahan yang boleh dihukum di bawah s 474 Kanun Keseksaan.

When the charges were read and explained to the accused, he claimed trial.

Briefly stated, the facts adduced by the prosecution were that on 3 November 1994 at about 11.15pm a police party led by Chief Insp Noraini bin Abdullah (SP4), acting on information received, went to Seng Huat & Co, a petrol station, at Jalan Laksamana Cheng Ho and waited there. The following morning at about 12.40am they saw a red Proton Saga motor car bearing registration no WBP 714 entering and stopping at the compound of the petrol station. The accused alighted from the car. SP4 and his party approached him and uttered the word 'police'. He tried to run away but was arrested. The accused was then searched. From his identity card, it was ascertained that his name is Hoo Chee Keong.

The police recovered from the accused's right shirt pocket, three credit cards wrapped in tissue and a plastic packet (exhs P3, P4 and P5).

From the left shirt pocket, four sales slips from another petrol station were recovered (exhs P6A, B, C and D). SP4 also recovered from the motor car a slip of paper which had eight series of numbers and four signatures on it (exh P8). The arrest of the accused and the recovery of the exhibits from him were not challenged by the defence.

In this evidence, SP4 gave particulars of P3, P4 and P5, none of which were in the name of the accused. The particulars of the cards were as follows:

1 Exhibit No: P3
Card No: 5279–7815–20231–5001
Magnetic Strip No: 5191–4300–1224–0393
Name on Card: PT Poon
Issuing Bank: Citibank
Expiry Date: Valid thru 11/94

2 Exhibit No: P4
Card No: 5400–6800–3003–0831
Magnetic Strip No: 5301–2500–9008–9752
Name on Card: Tan Soon Meng
Issuing Bank: National Westminster Bank
Expiry Date: Valid thru 02/95

3 Exhibit No: P5
Card No: 5420–3272–0280–3180
Magnetic Strip No: 5191–2300–0113–3181
Name on Card: Wong Kah Meng
Issuing Bank: Citibank
Expiry Date: Valid thru 5/94

Cheng Ket Chun (SP8) is the Director of Master Card International, Asia Pacific Region for Security and Risk Management. He held this post for more than three years and had given evidence in court which had been accepted. He said that Master Card is the owner of the Master Card credit cards. Banks and financial institutions are authorized to issue the credit cards to their customers. The account numbers of credit cards from Master Card are made up of 16 digits and always start with the number '5'. Visa Card starts with the number '4'. This is governed by an international agreement. He said that from an account number, he would be able to say to whom the card belongs and which financial institution had issued it. Master Cards have unique security features. On the reverse of a card, there is a signature panel and a magnetic strip. The embossed account numbers are encoded in the magnetic strip. He said that in all cases, the embossed numbers must match the encoded numbers. The card also has a hologram. He was asked by Insp Awang Din (SP14) to examine exhs P3, P4 and P5. He said that his examination revealed that the three cards were not genuine. The embossed account numbers on the three cards did not match the encoded numbers in the magnetic strip. He also said that the signature panels in the exhibits were of a low quality and were not produced by Master Card. The hologram was also not made by Master Card. He said that P3 belonged to DC Card Co Ltd, Japan. It should carry the name of DC Card and not Citibank. P4, which carried the name of National Westminster Bank, actually belongs to Malayan

Banking Bhd. The signature panel had also been tampered with. With regard to P5, he said that it belonged to Bank of Montreal although it carried the name of Citibank. He said that there were complaints on the improper use of the three cards. P3 was blocked on 30 December 1993. With regard to P4, the complaint was received on 28 June 1994 and there was no indication whether the card was blocked. He did not have the records for P5. He also testified on the manner of using a credit card. A person who uses the card does not incur any liability because the transaction is billed to the account number. After a transaction, the outlet where a card was used will present the sales draft to the bank that issued the card which is under an obligation to make the payment. A card can be accepted at an outlet either by electronically checking the encoded numbers to ensure that they match the embossed numbers on the card or by the manual method. He said that in the case of the manual method where the transaction is below the floor limit, a person who produces the card can still use it even if it has been blocked. The merchant will still accept the card and allow it to be used. This is for the obvious reason that under this method, the card cannot be verified.

Jailani bin Omar (SP6), an officer from Citibank Bhd, said that P3 and P5 were not issued by Citibank. They did not have their permanent numbers. Shankar a/l Ampiroraj, an officer from Malayan Banking Bhd, said that P4 was not issued by his bank.

Maninathan Pitchary (SP12) said that he obtained a Master Card from Maybank in 1993. His account number was 5400–6800–3003–0831 (the same numbers as those embossed on P4). He had received a statement containing transactions not carried out by him. After having made a report, he returned the card to Maybank in August 1994. He was then given a new card.

At the close of the case for the prosecution, the learned sessions court judge acquitted and discharged the accused on all three charges without calling upon him to enter his defence. The appeal by the Public Prosecutor is against this order.

In his grounds of judgment, the learned sessions judge had correctly identified the issues that had to be proved by the prosecution. They are that:

(a) P3, P4 and P5 were forged documents and that these documents were in the possession of the accused;

(b) the accused had knowledge that the documents were forged;

(c) the accused intended to use the documents fraudulently or dishonestly; and

(d) the documents are valuable securities.

He went on to say that the defence did not dispute that the documents were forged and that they were in the possession of the accused at the material time. With regard to the second ingredient, he said that the prosecution did not establish that the accused knew that the numbers on the magnetic strips were different from those embossed on the cards. He said that the mere possession of exhs P3, P4, P5 and P6 by the accused did

not mean that he knew that the documents were forged. In the circumstances, he was of the view that the prosecution had failed to establish that the accused had knowledge that the documents were forged. He also concluded that the conduct of the accused did not lead to the inference that he intended to use the documents. With regard to the fourth ingredient, he relied on the evidence adduced without particularizing them and the case of *Tio Tek Huat v PP* [1993] 2 CLJ 570 to rule that it was not established that the documents were valuable securities.

As this appeal involves certain findings of fact made by the learned sessions judge, I shall consider the extent to which an appellate court can interfere with such a finding. In an appeal involving a question of fact, the proper criterion is that the appellant must satisfy the appellate court that the judgment was grossly against the weight of the evidence (see *PP v Ma'arif* [1969] 2 MLJ 65). It is open to the Appellate Court to reverse a finding which amounts to an acquittal and substitute therefor a finding of conviction if the facts so warrant and the acquittal was based on wrong grounds (see *Paramasivan & Ors v PP* [1948–49] MLJ Supp 152). A magistrate should discuss the evidence and the probabilities arising from the circumstances of the case. The reasons for his findings should be stated. The grounds should indicate that he had in fact applied his mind to the evidence produced in the case. If he does not do so, the judgment will be rendered defective (see *PP v Abang Abdul Rahman* [1982] 1 MLJ 346). Having given due regard to the findings of fact of the lower court, an Appellate Court is not precluded from looking at the matter afresh (see *Mohd Shariff v PP* [1964] MLJ 64). This can arise where the trial court has overlooked or failed to take into account or give proper weight to or draw proper inferences from the evidence presented which otherwise might have resulted in a different conclusion (see *Yusoff bin Kassim v PP* [1992] 2 MLJ 183). In *Periasamy v PP* [1966] 1 MLJ 138, the Federal Court adopted the principle enunciated by Viscount Cave LC in *Mersey Docks & Harbour Board v Procter* [1923] AC 253 at pp 258–259, in the following terse terms:

> The procedure on an appeal from a judge sitting without a jury is not governed by the rules applicable to a motion for a new trial after a verdict of a jury. In such a case it is the duty of the Court of Appeal to make up its own mind, not disregarding the judgment appealed from and giving special weight to that judgment in cases where the credibility of a witness comes into question, but with full liberty to draw its own inference from the facts proved or admitted, and to decide accordingly.

An appellate court may allow an appeal from a determination on a question of fact if it appears to the court that no person acting judicially and properly instructed as to the relevant law could have come to the decision under appeal (*Re AB Ltd* [1957] MLJ 143).

Just as in the court below, there was no challenge before me by the accused that exhs P3, P4 and P5 were forged documents and that they were in his possession at the time of his arrest. What therefore fell upon me for determination were:

A (a) whether the accused had knowledge that the documents were forged and whether he intended to use them fraudulently or dishonestly as genuine; and

(b) whether the documents were valuable securities.

B I shall consider both these issues separately against the background of the submissions made by both parties.

Whether the accused had knowledge that the documents were forged and whether he intended to use them fraudulently or dishonestly as genuine

C In his grounds of judgment, the learned sessions judge failed to consider the fact that exhs P3, P4 and P5, which were wrapped in tissue and a plastic packet, bore the names of three persons. Thus, he had in his possession not one but three different cards in three different names. Furthermore, the accused also had in his possession sales slips (exh P6), which showed that exhs P3, P4 and P5 had been used previously. The D encoded numbers of the exhibits were different from the numbers embossed on them. These facts play a critical role in determining the knowledge and intention of the accused for having had the exhibits in his possession.

Proof of knowledge is very often a matter for inference. Possession of several forged documents, as in the circumstances of the appeal before me, E readily leads to an inference against the accused of the required knowledge and intention. In this regard, I refer to *Dr Sir Hari Singh Gour's Penal Law of India* (10th Ed, Vol IV) where the learned author says at p 3970:

> Besides possession, there must be knowledge that the document is a forgery. This may be the subject of proof, but it is more likely to be a matter for inference. For instance, if a person is found in possession of several counterfeit F seals and forged documents, which he cannot satisfactorily account for, the court may well be justified in presuming guilty knowledge and an intention to use them fraudulently (*Kisto Sooner Deb* 8 WR 11).

The passage that I have just referred to clearly has in contemplation s 106 of the Evidence Act 1950 which reads as follows:

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> When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.
>
> *ILLUSTRATIONS*
>
> (a) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of H proving that intention is upon him.
>
> (b) A is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him.

This section is an exception to s 101 of the Evidence Act 1950 which lays down the general rule that in a criminal case the burden of proof is on the I prosecution and this provision is not intended to relieve it of that duty. It is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult, for the prosecution to establish facts which are 'especially' within the knowledge of the accused and which

he could prove without difficulty or inconvenience. The meaning of the word 'especially' in the section was considered by Good J in *PP v Lim Kwai Thean* [1959] MLJ 179 where his Lordship said at p 181:

> To interpret that section properly, I think it is essential to concentrate upon what was meant by the word 'especially'. It does not say 'exclusively' or 'solely' within the knowledge of any person. And, as I see it, the effect of the word 'especially' is this: That if it is an easy matter for the person the proof of which by the prosecution would present the prosecution with inordinate difficulties, then ordinary common sense demands that the balance of convenience should be in favour of the prosecution, and that is, as I understand it, the ratio decidendi of the case in *Abdul Manap v PP* [1952] MLJ 140.

The above passage was cited with approved by the Federal Court in *Lee Chin Hock v PP* [1972] 2 MLJ 30. As to whether the fact of 'knowledge' is a matter that can be considered as 'especially' within the knowledge of a person, useful reference may be made to *Ho Tong Cheong & Ors v Oversea-Chinese Banking Corp Ltd* [1967] 2 MLJ 70, where Buttrose J in delivering the judgment of the Federal Court said at p 71:

> The fact as to whether the defendants *knowingly* committed the breaches complained of was surely something especially within their own knowledge.

The two illustrations to the section make its application clear. Where a person is found travelling without a ticket and is charged with so travelling, the prosecution need not and indeed cannot prove that the man never had a ticket. Once it is proved that he was travelling without a ticket a case against him is established. If the accused person once had a ticket and lost it, then such a fact is especially within his knowledge and it is for him to prove such a fact. Similarly, when a person does an act with some intention other than that which the character and circumstances of the act suggest, it is not for the prosecution to eliminate all other possible intentions. If the accused had a different intention, that is a fact especially within his knowledge which he must prove. In *Pashkodi v Krishnaji* AIR 1947 Nag 145, it was held that where a document containing material alterations is produced from the custody of the person in whose possession it was, he has to explain, where and how the alteration was made. In *PP v Yap Chai Kee* [1923] 4 FMSLR 75, the Court of Appeal held that the evidence for the prosecution that the accused was in possession of two forged rubber coupons raised a presumption that he knew that they were forged.

In the appeal before me, the prosecution had successfully established that the accused was in possession of three forged credit cards in three different names. The circumstances lead to the inference that the accused had knowledge that they were forged and had intended to use them as genuine. If the accused did not have any knowledge that the cards were forged or that he had intended to use them as genuine then it is a matter especially within his knowledge and it is for him to prove such fact under s 106 of the Evidence Act 1950.

Whether the documents were valuable securities

The phrase 'valuable security' appearing in s 474 of the Penal Code under which the accused had been charged is defined in s 30 of the same Code. The section reads as follows:

> The words 'valuable security' denote a document which is, or purports to be, a document whereby any legal right is created, extended, transferred, restricted, extinguished or released, or whereby any person acknowledges that he lies under legal liability, or has not a certain legal right.

A valuable security is a document of value, that is to say, it is a document which of itself creates or extinguishes legal rights or purports to create or extinguish them. Under the section, a document, though not a valuable security, would still be considered as one if it purports to be a valuable security (see *Kashi Nath Naek v Queen Empress* ILR 25 Cal 207). The word 'purport' is defined in *Black's Law Dictionary* (6th Ed) as:

> To convey, imply, or profess outwardly; to have the appearance of being, intending, claiming etc (see *United States v 306 Cases Containing Sandford Tomato Catsup With Preservative* DCNY 55 F Supp 725 at p 727).

On the scope of the word within the meaning of the section, *The Law of Crimes* by Ratanlal (23rd Ed, Vol 1) states at p 81:

> The use of the words 'which is, or purports to be' indicates that a document, which, upon certain evidence being given, may be held to be invalid, but on the face of it, it creates, or purports to create, a right in immovable property, although a decree could not be passed upon the document, is contemplated within the purview of the section. Had it not been so, any forged document, if the forgery was admitted, or any document which was not executed or stamped according to law and on which no decree could be passed by a civil court, could not be called a valuable security (see *Ram Harakh Pathak* [1925] 48 All 140; *Neki Ram* [1976] 76 Punj IR 780).

Thus, as forgery is complete as soon as the forged document purports to be a valuable security, it follows that it is not necessary that the document should be prima facie good (see *Dr Sir Hari Singh Gour's Penal Law of India* (10th Ed) Vol IV p 3938). However, as *The Law of Crimes* by Ratanlal (23rd Ed, Vol I) states at pp 81–82:

> A cancelled instrument is not a valuable security, 'for an instrument available, for the purpose for which it was made is clearly what the clause intended; a cancelled instrument therefore, though by the cancelling of it a legal right may be extinguished, in as much as the instrument upon which such right depended is thereby voided, does not fall within its scope (1st Rep s 89'.

What is important is that the document must be available for the purpose for which it was made. So long as a document purports to give authority to some person to deliver movable property it is a valuable security (see *PP v Yap Chai Kee* (1923) 4 FMSLR 75). Thus a cancelled document may also amount to a valuable security (see *Raghavan on Law of Crimes* (3rd Ed) at p 58).

The definition section further requires that the document is one whereby any 'legal right' is created, etc. The concept of legal right was considered by Chua J in *Peter Tham Wing Fai v PP* [1988] 2 MLJ 424, where his Lordship said at p 428:

> The key words in s 30 are 'any legal right' and the words 'whereby any person acknowledges that he lies under legal liability'.
>
> The concept of legal right was considered in the Indian case of *Daniel v The State* AIR 1968 Mad 349. In that case, an American national obtained a British passport under the false name of a deceased British subject by forging his signature on the application for a British passport. He used the passport issued to obtain entry into India. He was charged, inter alia, for forging a document which purported to be a valuable security, namely, the passport. The court held that the passport creates a legal right as mentioned in s 30 of the Indian Penal Code and is a valuable security. Section 30 of the Indian Penal Code defines 'valuable security' and is in pari materia with our s 30 of the Penal Code. Reddy J said (at p 354 para 21):
>
> > 'Legal right is a difficult concept. It is not defined. It is, therefore, necessary to note carefully what the eminent jurists have said about this concept of legal right.'
>
> He then went on to consider what the eminent jurists said and he said (at p 355):
>
> > 'From the statement made by the jurists noted above, the following principles can be deduced broadly to understand what a 'legal right' is: (1) legal right in its strict sense is one which is an assertable claim, enforceable before courts and administrative agencies; (2) in its wider sense, a legal right has to be understood as any advantage or benefit conferred upon a person by a rule of law; (3) there are legal rights which are not enforceable, though recognized by the law; (4) there are rights recognized by the International Court, granted by international law, but not enforceable; and (5) a legal right is a capacity of asserting a secured interest rather than a claim that could be asserted in the courts.
> >
> > It is therefore clear that the test of enforceability, though it may be a normal one, is not the only test for determining a legal right. A legal right may be one recognized by rule of law, either by municipal law or international law, without the capacity of being enforced. A legal right may be asserted even before administrative agencies. It includes the liberty of freedom from penalty. In short, it can be said that a legal right is one which is either enforceable or recognized.'

It follows that the test of enforceability is not the only test for determining a legal right. A right qualifies as a legal right so long as it is recognized as such. This is significant as many forged documents will not be enforceable in a court of law for obvious reasons but may be recognized for the purpose for which they were made.

Having ratiocinated the meaning of a valuable security, I shall now consider whether exhs P3, P4 and P5 are indeed valuable securities. This depends on whether they purport to give authority to some person to deliver movable property by their use in the light of the fact that P3 had been blocked and P4 would appear to be so and P5 had expired. In this

A regard, the evidence of SP8 is relevant. He said that a credit card can be accepted at an outlet either by electronically checking the encoded numbers to ensure that they match with the embossed numbers on the card or by the manual method. He said that in the case of the manual method, where the transaction is below the floor limit, a person who produces a card can still use it. The merchant will still accept the card and allow it to be used. In the case of exhs P3 and P4, they were still valid at the time of their recovery although they had been blocked. This means that a person would not be able to use them if the electronic method is resorted to but would be able to use them if the manual method is followed. Under the latter category, the credit card is clearly a valuable security while under the former, it purports to create a right on the face of it thereby qualifying as a valuable security. Exhibits P3 and P4 are therefore valuable securities. I interpolate to refer to *Tio Tek Huat v PP* [1993] 2 CLJ 570 where LC Vohrah J held that a cancelled credit card is not a valuable security as no right or liability could properly have accrued in respect of it. The argument in that case was solely centred on the use of a card through the electronic method where a transaction would be refused. The use of a card by the manual method was not in issue in that case. Furthermore, the question of a document that purports to be a valuable security does not appear to have been argued in that case. Accordingly, its authority is restricted to its peculiar facts. In the case of P5, it is not a valuable security nor can it purport to be one as it had expired at the time of its recovery and could therefore not be used.

In the upshot, I allowed the appeal with regard to the first and second charges. I set aside the order made by the learned sessions judge and directed that defence be called on these two charges. With regard to the third charge, I dismissed the appeal.

Order accordingly.

Reported by Eugene Lee Hong Whye